SUPREME COURT, U.S.

(1)

NO. 991469 FEB 28 2000

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CHESTER BROST,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
and
JUSTICES OF THE FIRST DISTRICT
APPELLATE COURT, FOURTH DIVISION,
et al.,
Respondents.

Petition for Writ of Certiorari to the
Appellate Court of Illinois,
First Judicial District,

and/or

to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

FREDERICK F. COHN
601 S. LaSalle St.
Suite 700
Chicago, IL 60605
(312) 641-0692
Attorney for
Petitioner

DENNIS DOHERTY
601 S. LaSalle St.
Suite 700
Chicago, IL 60605
(312) 580-0935
Of Counsel

36pp

QUESTION PRESENTED

1. Has defendant, an Illinois prison inmate, been denied meaningful access to the courts under the Fourteenth Amendment?

PARTIES INVOLVED

In the appeal proceedings from the Circuit Court's summary denial of his PC petition:

Petitioner, Chester Brost, was the [post-conviction / PC] Petitioner in the Circuit Court of Cook County, Illinois; the Appellant in the Appellate Court of Illinois; and the Petitioner in the Illinois Supreme Court.

Respondent, People of the State of Illinois, was the PC Respondent in the Circuit Court of Cook County, Illinois; the Appellee in the Appellate Court of Illinois; and the Respondent in the Illinois Supreme Court.

* * *

In both original proceedings (Nos. 87561 and 88191) in the Illinois Supreme Court, wherein Petitioner sought extraordinary relief [supervisory order or in the alternative, mandamus and/or prohibition]:

Petitioner, Chester Brost, was the movant in the Illinois Supreme Court, and the Justices of the First District Appellate Court, Fourth Division, et al., were the respondents.

TABLE OF CONTENTS

	Page
Questions Presented.....	i
Parties Involved.....	ii
Table of Contents.....	iii
Table of Authorities Cited.....	vii
Prayer for Certiorari.....	1
Opinions and Orders Below.....	1
Jurisdictional Statement.....	3
Constitutional Provision Involved....	3
Statement of the Case.....	4
Statement of Facts.....	4
Raising the Federal Question.....	7
Reason for Granting Certiorari.....	7

A PRISON INMATE IS ENTITLED TO MEANINGFUL ACCESS TO THE COURTS UNDER THE FOURTEENTH AMENDMENT.

PETITIONER, AN ILLINOIS PRISON INMATE, HAS BEEN DENIED MEANINGFUL ACCESS TO THE COURTS, IN VIOLATION OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. REVIEW BY THIS COURT IS WARRANTED, TO ENFORCE THIS

IMPRISONED PETITIONER'S DUE PROCESS RIGHT TO ACCESS TO THE COURTS..... 7

Conclusion..... 8

APPENDICES:

App. A - Order of Appellate Court of Illinois, First District, Fourth Division, People v. Brost, Nos. 1-97-0733 and 1-97-2737 consolidated, entered March 4, 1999, granting leave for new counsel to substitute as counsel on appeal, and to file Supplemental Brief within 35 days..... App. 1

App. B - Order of Appellate Court of Illinois, First District, Fourth Division, People v. Brost, Nos. 1-97-0733 and 1-97-2737 consolidated, entered Apr. 22, 1999, denying defendant's Motion for leave to file supplemental brief instanter..... App. 3

App. C - Order of Appellate Court of Illinois, First District, Fourth Division, People v. Brost, Nos. 1-97-0733 and 1-97-2737 consolidated, entered Apr. 22, 1999, denying defendant's Motion to Enlarge the Record..... App. 5

App. D - Order of Appellate Court of Illinois, First District, Fourth Division, People v. Brost, Nos. 1-97-0733 and 1-97-2737 consolidated, entered May 6, 1999, upon reconsideration of Order entered April 22, 1999 - defendant's Motions for leave to file

supplemental brief instanter, and to enlarge the record, denied..... App. 7

App. E - Order of Appellate Court of Illinois, First District, Fourth Division, People v. Brost, Nos. 1-97-0733 and 1-97-2737 consolidated, entered Aug. 5, 1999, denying Motion by new counsel requesting leave of court to file a supplemental brief on behalf of Appellant, where the ineffective assistance of former counsel caused same to be presented out-of-time..... App. 9

App. F - Order of Supreme Court of Illinois, entered June 18, 1999, In re: Chester Brost, movant v. Justices of the First District Appellate Court, Fourth Division, et al., respondents, No. 87561, denying Motion for supervisory order or in the alternative, mandamus and/or prohibition..... App. 11

App. G - Order of Supreme Court of Illinois, entered September 21, 1999, In re: Chester Brost, movant v. Justices of the First District Appellate Court, Fourth Division, et al., respondents, No. 88191, denying Second Motion Requesting The Exercise of Supervisory Authority Pursuant to Supreme Court Rule 383..... App. 13

App. H - Order of Supreme Court of Illinois, entered December 1, 1999, People v. Brost, No. 88351, denying petition for leave to appeal.... App. 15

App. I - Order of Appellate Court of Illinois, First District, Fourth Division, People v. Brost, Nos. 1-97-0733 and 1-97-2737 consolidated, dated March 31, 1999, affirming dismissal of post-conviction petition..... App. 16

TABLE OF AUTHORITIES CITED

Page

Cases

Bounds v. Smith,
430 U.S. 817, 822 (1977).... 7

Marino v. Ragen,
332 U.S. 561, 570 (1947).... 8

Constitutional Provision

The Due Process Clause of the
Fourteenth Amendment to the
United States Constitution.... passim

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT
and/or
TO THE SUPREME COURT OF ILLINOIS

Petitioner, Chester Brost, an Illinois prison inmate, prays that a writ of certiorari issue:

to the Appellate Court of Illinois, First Judicial District, to review its judgment affirming the summary dismissal of his post-conviction petition, and denying his new counsel leave to file a Supplemental Brief [and expanded record];

and/or

to the Supreme Court of Illinois, to review its judgment declining to require the Appellate Court to allow such Supplemental Brief [and expanded record] to be filed.

Opinions and Orders Below

All of the following judgments and orders are unreported [unpublished], and all are contained in the Appendices to this Petition.

The judgment (Order) of the Appellate Court of Illinois, First Judicial District, Nos. 1-97-0733 and 1-97-2737 consolidated, affirming summary

dismissal of petitioner's post-conviction petition, entered March 31, 1999, is set out at App. I, pp. App. 16-20.

The Orders of the Illinois Appellate Court, First Judicial District, Nos. 1-97-0733 and 1-97-2737 consolidated, denying leave to file his Supplemental Brief instanter (App. B, pp. App. 3-4) and to enlarge the record, (App. C, pp. App. 5-6), both entered April 22, 1999, are set out in the Appendices, infra.

The Order of the Illinois Appellate Court, First Judicial District, Nos. 1-97-0733 and 1-97-2737 consolidated, entered May 6, 1999, on reconsideration, denying motions for leave to file supplemental brief and to enlarge the record, is set out at App. D, pp. App. 7-8.

The Order of the Appellate Court in the above cause, entered Aug. 5, 1999, denying motion of new counsel requesting leave of court to file a supplemental brief on behalf of Appellant, where the ineffective assistance of former counsel caused same to be presented out-of-time, is set out at App. E, pp. App. 9-10.

The Orders of the Supreme Court of Illinois, in Chester Brost, movant v. Justices of the First District Appellate Court, Fourth Division, et al., respondents, No. 87561 (entered June 18,

1999) and No. 88191 (entered Sept. 21, 1999), respectively denying petitioner's motion and second motion for supervisory order, etc., are set out at App. F, pp. App. 11-12, and App. G, pp. App. 13-14.

The Order of the Supreme Court of Illinois, No. 88351, entered Dec. 1, 1999, denying leave to appeal, is set out at App. H, p. App. 15.

Jurisdictional Statement

The judgment sought to be reviewed was entered by the Illinois Appellate Court on March 31, 1999. (App. I, pp. App. 16-20)

Also sought to be reviewed, are Orders of the Supreme Court of Illinois entered on June 18, 1999 and September 21, 1999. (Apps. F & G, pp. App. 11-12 & 13-14)

The Order of the Supreme Court of Illinois denying petition for leave to appeal was entered December 1, 1999. (App. H, p. App. 15)

Jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

Constitutional Provision Involved

The federal constitutional provision involved is the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Statement of Facts

Petitioner (then, defendant) was convicted in the Circuit Court of Cook County by a jury, of aggravated criminal sexual assault, and aggravated kidnapping, and was sentenced to 105 years in prison. (C 12-13) Defendant had private counsel at trial, but appointed counsel on appeal. (C 71)

Appointed counsel raised only one issue on direct appeal, that defendant did not waive his right to be present for sentencing. (C 71)

The conviction and sentence were affirmed in an unpublished Order [People v. Brost, No. 1-95-0576 (1966)], and defendant's pro se petition for leave to appeal to the Illinois Supreme Court was thereafter denied. (C 70-71) (See p. App. 2.)

Within the applicable State limitations period, petitioner filed in the Circuit Court, a "Motion to Toll Post-Conviction Statute and For Appointment of Counsel." (C 2) The motion asserted that he was indigent, that Stateville penitentiary was on 24-hour lockdown which prevented him access to a law library and inmate or other legal assistance, and that his legal papers had been taken from him during a prison "shakedown." (C 2) This motion

was denied, without appointment of counsel. (C 2)

Defendant thereafter filed a pro se post-conviction [PC] petition, which was summarily denied as having been untimely-filed. (C 168) Defendant's petition made numerous allegations of ineffective assistance of trial and appellate counsel, and prosecutorial misconduct. (C 12-43)

Counsel was appointed to appeal the dismissal of the pro se petition, but appointed counsel filed an inadequate and incompetent Brief in the Appellate Court of Illinois, First Judicial District.

Prior to any decision being rendered by that Appellate Court, however, petitioner's family retained private counsel who, on March 4, 1999, was granted leave to substitute as appellate counsel, and to and including March 30, 1999, within which to file a Supplemental Brief. (App. A, p. App. 1)

Thereafter, the Appellate Court denied the instanter filing of the Supplemental Brief, which raised three valid (viable) issues unraised by appointed counsel, as it was submitted four (4) days past its first due date. (App. B, pp. App. 3-4)

The Appellate Court also denied at the same time, a Motion to Enlarge the

Record, with evidence [official records of the Illinois Attorney Registration and Disciplinary Commission] that defendant's trial counsel was suspended from the practice of law for malfeasance about the time of defendant's trial. (App. C, pp. App. 5-6)

Motion For Reconsideration was denied, as to both the above Orders. (App. D, pp. App. 9-10)

A Motion for reconsideration filed by new and separate counsel, alleging ineffectiveness in the 4-day-late Supplemental Brief submission was denied. (App. E, pp. App. 11-12)

The Supreme Court of Illinois denied two successive motions for supervisory Orders (Apps. F & G, pp. App. 13-16), and denied leave to appeal. (App. H, p. App. 17)

The dismissal of the pro se PC petition as untimely-filed was affirmed by the Appellate Court on March 31, 1999. (App. I, pp. App. 16-20)

Petitioner has not had a meaningful opportunity to adequately present his claims of ineffective assistance of trial and appellate counsel, and prosecutorial misconduct, to an Illinois court.

RAISING THE FEDERAL QUESTION

The federal question was raised throughout these proceedings, inasmuch as the Fourteenth Amendment entitles a prison inmate meaningful access to the courts, and that right has been violated throughout these proceedings, as noted in the Statement of Facts, set out above.

REASON FOR GRANTING CERTIORARI

A PRISON INMATE IS ENTITLED TO MEANINGFUL ACCESS TO THE COURTS UNDER THE FOURTEENTH AMENDMENT.

PETITIONER, AN ILLINOIS PRISON INMATE, HAS BEEN DENIED MEANINGFUL ACCESS TO THE COURTS, IN VIOLATION OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. REVIEW BY THIS COURT IS WARRANTED, TO ENFORCE THIS IMPRISONED PETITIONER'S DUE PROCESS RIGHT TO ACCESS TO THE COURTS.

A prison inmate is entitled to meaningful access to the courts under the Due Process Clause of the Fourteenth Amendment. Bounds v. Smith, 430 U.S. 817, 822 (1977).

> "If the federal guarantee of due process in a criminal trial is to have real significance in Illinois, it is imperative that men

> convicted in violation of their constitutional rights have an adequate opportunity to be heard in court. This opportunity is not adequate so long as they are required to ride the Illinois merry-go-round . . . before getting a hearing in a federal court." Marino v. Ragen, 332 U.S. 561, 570 (1947).

The instant case is an outrageous example of a prison inmate being denied access to the courts in violation of the Fourteenth Amendment.

Certiorari should be allowed.

C O N C L U S I O N

For the foregoing reasons, certiorari ~~should~~ be allowed.

FREDERICK F. COHN
Attorney for Petitioner

DENNIS DOHERTY
Of Counsel

APPENDICES

APPENDIX A

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,
PLAINTIFF-APPELLEE,

vs.

CHESTER BROST,
DEFENDANT-APPELLANT.

Nos. 97-0733, 97-2737 } Consolidated

ORDER

This cause coming before the Court on the motion of the defendant-appellant, as Motion To Allow Private Counsel to Substitute as Counsel on Appeal, and File Supplemental Brief in 35 days; and the Court having been advised in the premises, and due notice having been given, IT IS HEREBY ORDERED:

The motion is allowed/~~denied~~.

DATED: _____

[signed] Leslie Elaine South
JUSTICE

ORDER ENTERED
MAR 04, 1999
APPELLATE COURT
FIRST DISTRICT

_____
JUSTICE

_____
JUSTICE

JUSTICE

DENNIS DOHERTY
Attorney for Appellant
601 S. LaSalle St.
Suite 700
Chicago, IL 60605
312/580-0935

APPENDIX B

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff-Appellee,)
)
vs.)
)
CHESTER BROST,)
Defendant-Appellant.)

Nos. 97-0733]
] Consolidated
97-2737]

O R D E R

This cause coming before the Court on the motion of the defendant-appellant, as Motion For Leave to File Supplemental Brief Instanter, and the Court having been advised in the premises, and due notice having been given,
IT IS HEREBY ORDERED:
The motion is ~~allowed~~/denied.

DATED: _____

[signed] Leslie Elaine South
JUSTICE

ORDER ENTERED
APR 22, 1999
APPELLATE COURT
FIRST DISTRICT

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

DENNIS DOHERTY
Attorney for Appellant
601 S. LaSalle St.
Suite 700
Chicago, IL 60605
312/580-0935

APPENDIX C

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff-Appellee,)
)
vs.)
)
CHESTER BROST,)
Defendant-Appellant.)

Nos. 97-0733]
] Consolidated
97-2737]

O R D E R

This cause coming before the Court on the motion of the defendant-appellant, as Motion to Enlarge the Record, and the Court having been advised in the premises, and due notice having been given, IT IS HEREBY ORDERED:

The motion is ~~allowed~~/denied.

DATED: _____

[signed] Leslie Elaine South
JUSTICE

ORDER ENTERED
APR 22, 1999
APPELLATE COURT
FIRST DISTRICT

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

DENNIS DOHERTY
Attorney for Appellant
601 S. LaSalle St.
Suite 700
Chicago, IL 60605
312/580-0935

APPENDIX D

[May 6, 1999]

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff-Appellee,)
)
vs.)
)
CHESTER BROST,)
Defendant-Appellant.)

Nos. 97-0733)
) Consolidated
97-2737)

O R D E R

This cause coming before the Court on the motion of appellant, as "Motion for Reconsideration of the April 22, 1999 Order of Justice South Denying New Counsel Leave To File Appellant's Supplemental Brief Instanter, Same Having Been Mailed Five (5) Days After the First Due Date For the Filing of the Said Supplemental Brief," and the Court having been advised in the premises, and due notice having been given,

IT IS HEREBY ORDERED:

Upon reconsideration, the motion for leave to file the Supplemental Brief instanter is ~~allowed~~/denied.

Upon reconsideration, the motion to enlarge the record is ~~allowed~~/denied.

DATED: _____

[signed] Leslie E. South
JUSTICE

ORDER ENTERED
MAY 06, 1999
APPELLATE COURT
FIRST DISTRICT

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

DENNIS DOHERTY
Attorney for Appellant
601 S. LaSalle St.
Suite 700
Chicago, IL 60605
312/580-0935

APPENDIX E

[August 5, 1999]

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff-Appellee,)
)
vs.)
)
CHESTER BROST,)
Defendant-Appellant.)

Nos. 97-0733]
] Consolidated
97-2737]

O R D E R

This cause coming before the Court on the motion of the defendant-appellant, as MOTION BY NEW COUNSEL REQUESTING LEAVE OF COURT TO FILE A SUPPLEMENTAL BRIEF ON BEHALF OF APPELLANT, WHERE THE INEFFECTIVE ASSISTANCE OF FORMER COUNSEL CAUSED SAME TO BE PRESENTED OUT-OF-TIME, and the Court having been advised in the premises, and due notice having been given, IT IS HEREBY ORDERED:

The motion is ~~allowed~~/denied.

DATED: _____

[signed] Warren D. Wolfson
JUSTICE

ORDER ENTERED
AUG 05, 1999
APPELLATE COURT
FIRST DISTRICT

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

DANIEL STOHR
Attorney for Appellant
150 North Wacker Drive
Suite 2020
Chicago, IL 60606
(312) 726-1180

APPENDIX F

[SEAL of the SUPREME COURT]

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035

TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(217) 524-8132

FIRST DISTRICT OFFICE
20TH FLOOR
160 NO. LASALLE ST.
CHICAGO 60601
(312) 783-1332

TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(312) 793-1333

June 18, 1999

Mr. Dennis Doherty
Attorney at Law
601 South LaSalle Street
Suite 700
Chicago, IL 60605

In re: Chester Brost, movant v.
Justices of the First
District Appellate Court,
Fourth Division, et al.,
respondents.
No. 87561

Today the following order was entered in the captioned case:

Motion by movant for supervisory order or in the alternative, mandamus and/or prohibition.
Motion Denied.

Very truly yours,

[signed] Juleann Hornyak
Clerk of the Supreme Court

cc: Hon. Jim Ryan
Hon. Thomas E. Hoffman
Hon. Richard A. Devine
Hon. Warren D. Wolfson
Hon. Leslie E. South
Shelvin Louise Marie Hall

APPENDIX G

[SEAL of the SUPREME COURT]

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035

TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(217) 524-8132

FIRST DISTRICT OFFICE
20TH FLOOR
160 NO. LASALLE ST.
CHICAGO 60601
(312) 783-1332

TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(312) 793-1333

September 21, 1999

Mr. Daniel Stohr
Attorney at Law
150 North Wacker Drive
Suite 2020
Chicago, IL 60606
(312) 726-1180

In re: Chester Brost, movant v.
Justices of the First
District Appellate Court,
Fourth Division, et al.,
respondents.
No. 88191

Today the following order was entered in the captioned case:

Second Motion by movant Requesting The Exercise of Supervisory Authority

Pursuant to Supreme Court Rule 383. Motion Denied.

Very truly yours,

[signed] Juleann Hornyak
Clerk of the Supreme Court

cc: Hon. Jim Ryan
Hon. Thomas E. Hoffman
Hon. Richard A. Devine
Hon. Warren D. Wolfson
Hon. Leslie E. South
Shelvin Louise Marie Hall

APPENDIX H

88351

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

December 1, 1999

Mr. Dennis Doherty
Attorney at Law
601 South LaSalle Street
Suite 700
Chicago, IL 60605

No. 88351 - People State of Illinois, respondent, v. Chester Brost, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 23, 1999.

APPENDIX I

FOURTH DIVISION
March 31, 1999

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

1-97-0733 and 1-97-2737
Consolidated

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

v.

CHESTER BROST,
Defendant-Appellant.

Appeal from the Circuit Court of Cook County.

No. 93 CR 12680

Honorable Thomas A. Hett, Judge Presiding.

O R D E R

Following a jury trial, defendant Chester Brost was convicted of robbery, aggravated kidnapping and three counts of aggravated criminal sexual assault.

He was sentenced to a seven-year prison term for robbery to run concurrently with consecutive sentences of 15 years for aggravated kidnapping and 30 years for each count of aggravated criminal sexual assault. His convictions and sentences were affirmed on direct appeal. People v. Brost, No. 1-95-0576 (1966) (unpublished order under Supreme Court Rule 23). His petition for leave to appeal to the Illinois Supreme Court was denied on June 5, 1996. Defendant then filed a motion to toll the statute of limitations for filing a post-conviction petition, which the trial court denied on January 8, 1997. Subsequently, defendant filed a pro se post-conviction petition, which the trial court dismissed as untimely. He now [p. 2] appeals from the dismissal of that petition.

On February 20, 1997, defendant filed a pro se post-conviction petition alleging ineffective assistance of counsel and other constitutional violations. In dismissing defendant's petition, the trial court considered his motion to toll the statute of limitations, attached as an exhibit to the petition, as an attempt to show that his delay in filing was not due to his culpable negligence. The motion alleged that, due to prison lockdowns, he was confined to his cell 24 hours a day. The prison only allowed 11 inmates a day access to the law library, while the rest were put on a waiting list. Defendant further alleged that the paralegals and law clerks were unable to

provide adequate assistance, and without appointment of counsel he would be unable to adequately present his contentions of constitutional violations. After defendant's petition was dismissed, he filed a motion to reconsider, alleging that the Stateville Correctional Center was on lockdown from April 16, 1996 to October 23, 1996, during which time inmates did not have access to the law library. After October 23, defendant was allowed to go to the library once a month for a 45-minute period.

The Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq. (West 1996)) provides:

> "No proceedings under this Article shall be commenced more than 6 months after the denial of a petition for leave to appeal * * * or 3 years from the date of [p. 3] conviction, whichever is sooner, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence." 725 ILCS 5/122-1(c) (West 1996).

Here, defendant's petition for leave to appeal to the Illinois Supreme Court was denied on June 5, 1996, allowing defendant until December 5, 1996, to file his petition for post-conviction relief.

Defendant contends on appeal that the trial court improperly conducted an ex parte investigation, relying on a letter from the Department of Corrections outlining Department

regulations and policy regarding inmates' access to the law library during lockdown periods. We review de novo the sufficiency of the allegations in a post-conviction petition dismissed without an evidentiary hearing. People v. Coleman, 183 Ill.2d 366, 388-89 (1998). Therefore, we give no deference to the trial court's determination, but rely solely on the allegations contained in defendant's post-conviction petition.

Freedom from culpable negligence is difficult to establish and is also subject to de novo review. People v. Perry, 293 Ill. App. 3d 113, 115 (1997) "[I]n order to withstand dismissal at the first stage of post-conviction proceedings, a petition for post-conviction relief need only contain a simple statement which presents the gist of a claim for relief which is meritorious when considered in view of the record of the trial court proceedings." [p. 4] People v. Dredge, 148 Ill. App. 3d 911, 913 (1986). A pro se defendant need not construct legal arguments, but must allege sufficient facts in his post-conviction petition from which the trial court could find a valid claim of deprivation of a constitutional right. People v. Lemons, 242 Ill. App. 3d 941, 947 (1993). All well-pleaded facts in a petition are taken as true. People v. Coleman, 183 Ill. 2d 366, 381 (1998).

In Perry, the defendant alleged that prison lockdowns restricted his access to the law library and delayed his timely filing. The court found that

the record showed periods of time in which the prison was not in lockdown, thus refuting defendant's contention that he had no access to the law library. Perry, 293 Ill. App. 3d at 117. Similarly, in this case defendant filed his post-conviction petition more than two months after the December 5, 1996, deadline. In the affidavit attached to his motion to toll the statute of limitations, defendant admitted that despite the lockdown, he was allowed out of his cell if called for library privileges, visits, showers, and yard time. He stated in his motion to reconsider the denial of his post-conviction petition that the lockdown ended on October 23, 1996, more than one month before his petition was due. Although defendant also alleges in his brief on appeal that his trial transcripts were lost from June 15, 1996, until November 1, 1996, he still had more than a month to prepare his petition. Under these circumstances, defendant failed to demonstrate that his [p. 5] untimely filing was excused.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

HALL, J., with HOFFMAN and WOLFSON, JJ. concurring.